

COMMISSION REPORTS FINDINGS AS TO VALUATION OF CAPITAL TRACTION COMPANY PROPERTY

(Continued from First Page.)

As follows:

Cost of road purchased.....	\$200,000.00
Track and roadway.....	4,765,700.02
Buildings and power station equipment.....	3,153,238.92
Miscellaneous equipment.....	49,982.38
Engineering and superintendence.....	6,629.79
General miscellaneous.....	141,301.33
Interest during construction.....	206,331.00
Materials and supplies.....	67,049.00
Working capital.....	105,049.00
Total.....	\$11,338,757.97

Agreed to Accept Figures.

As to the reproduction cost of the physical property of the company, the report refers to the fact that the company agreed to accept the figure of \$10,966,214 as representing the total reproduction cost of that part of its physical property which is included in the report of Charles L. Plubury, engineer for the commission.

An allowance of \$1,375,000 is made for development costs, the commission holding that the company cannot consider to have had sufficient earnings in the past to have been able to amortize the development cost claimed.

The company claimed \$275,000 as working capital. The commission holds that it will be equitable to allow but \$105,000 for cash working capital as of July 1, 1914.

In reference to value as an established business, the company presented a claim of \$5,150,000, the amount standing for franchise, the commission holds that the company cannot consider to have had sufficient earnings in the past to have been able to amortize the development cost claimed.

Basis for Valuation.

"It was earnestly contended by the company, however, and urged upon the commission with vigorous insistence by its counsel, that as a matter of law the commission must accept without question the valuation of that part of the company's property represented by the Washington and Georgetown Railroad Company, the purchase price of \$1,750,000 paid for that company by the Rock Creek Railway Company in 1895.

"This contention was founded upon the decision of the Supreme Court of the United States in what is known as the Consolidated Gas case, reported as *Wilcox vs. Consolidated Gas Company*, U. S. 18, page 18. Under the authority of this case it was asserted as a matter of law that unless some fraud could be shown in the transaction, the commission was bound to accept the purchase price as representing absolutely the value of the Washington and Georgetown Railroad Company at that time, and find the present valuation of the Capital Traction Company, so far as investment was concerned, by adding thereto the value of the Rock Creek Railway Company and all additions to capital account and all development costs and other elements of value accruing since the purchase.

"It was contended that this purchase was specifically authorized by Congress; that it had been acquiesced in by the public; that the stock issued in pursuance thereof had been largely traded in, on the faith of this transaction, and that the condition created at the time was a fixed condition not to be changed or made the subject of any sort of distorting analysis.

Decision Was Controlling.

"It was insisted before the commission that the facts in the Consolidated Gas case and in the present case were so similar that this decision was controlling as to the law to be applied in this instance. This contention is correct as a matter of law, then as no fraud is attributed to the transaction, the purchase price as accepted, unless the facts in the two cases present a sufficient dissimilarity of aspect to differentiate them. It is not assumed by the commission that there must be such a substantial similarity between them that in reason and in law the rule as to the one must be considered as applicable to the other. It, therefore, remains to be determined whether such similarity does or does not exist.

"In the Consolidated Gas case six companies had been merged into a single company by legislative authority. There was no purchase of one company by another company, nor did one of the gas companies purchase the other five. The agreed price. The physical property of all six companies was appraised at \$30,000,000 in round figures, but stock was issued covering the property of all kinds of the consolidating companies, both tangible and intangible, in the sum of \$37,781,000, and the sum in excess of the appraised value of the physical property, viz., \$7,781,000, was considered to be the value of the franchises of the consolidating companies. It was not disclosed either in the testimony taken in the case or in the record, upon what basis these franchises were valued, but the fact remains that they were valued at about 25 per cent of the value of the tangible property.

Valuation of \$5,600,000.

"In the case of the Capital Traction Company the tangible property transferred, according to the company's figures (Hanna Exhibit 1) amounted to \$5,600,000, in round figures, at the time of the transfer (and this included \$750,000 of overhead expenses, not shown on the books), and the purchase price paid was \$10,750,000, leaving the intangible property, which may or may not be considered as representing a franchise value, the sum of \$5,150,000. It will thus be seen that in the one case the franchises of six companies were valued at slightly over 25 per cent in all of the value of the tangible property, while in the present case a franchise value of almost 100 per cent was estimated and paid for in stock.

"Another dissimilarity is that in the Consolidated Gas case the law distinctly provided that if such consolidation was effected the amount of the capital represented by stock could not be valued at more than the aggregate value of the property, franchise and rights of the several companies to be consolidated, and it thus appears that in the contemplation of the law the existing franchise and intangible rights were to be given some specific value.

"The difference between this law of New York authorizing the consolidation of the gas companies and the valuation of their franchises from the law authorizing the acquisition of the Washington and Georgetown Railroad Company is very marked. By the act of Congress, approved March 1, 1895, the Rock Creek Railway Company was authorized, by the vote of a majority of its capital stock, to contract with any street railway owning or operating, connecting or intersecting line for the joint management, lease or purchase of such connecting or intersecting line or lines and to operate the same in connection with its original line and to secure the same by the actual consideration paid or the

Statutes Are Dissimilar.

"It will be seen that these respective statutes are dissimilar. The Rock Creek Railway Company was given by the terms of the act the right to operate any intersecting line it purchased. It did not require any further or additional franchise for such operation. Its purchase of the line gave the right to operate cars over it and, while it may be asserted that it was necessary to pay the value of the franchise in order to acquire the line, it may be said with almost equal force that the line could have been acquired and operated exclusive of the franchise. There is certainly nothing in the act, as there was in the New York statute, specifically authorizing the acquisition and valuation of the franchise and the issue of capital stock to cover the cost of the same.

"The commission is not inclined to indulge in any hair-splitting distinction of academic discussion over this point, but in view of the careful words of the Supreme Court in *Consolidated Gas*, it calls attention to this distinction.

"The Supreme Court said in that case: 'What has been said herein regarding the value of the franchise in this case has been necessarily founded upon its own peculiar facts, and the commission is not inclined to precedents in regard to the valuation of franchises generally, where the facts are not similar to those in the case before us. It simply accepts the sum named as the value under the circumstances stated.'

"It appears to the commission that the Supreme Court used this guarded and restrictive language as a warning that its decision was to form no precedent where the facts were different, and it certainly follows that where the facts are dissimilar and the facts are dissimilar, the court clearly indicates that its decision must not be used as a precedent.

Admonished to Carefulness.

"Admonished to carefulness by the cautioning words of the Supreme Court, and mindful of the dissimilarity in aspect of the law under which the company's property was consolidated and the act of Congress under which the Washington and Georgetown Railroad Company was purchased, and the marked difference between the proportion of the value given to the franchises in the one case and in the other, in comparison with the value of the tangible assets of the respective companies—a difference of about 400 per cent—the commission feels that it is justified in the performance of the duty imposed upon it by Congress and its responsibility to the public, carefully to consider the financial history of the Washington and Georgetown Railroad Company, the relation of its earnings to its originally and subsequently invested capital and the other circumstances surrounding the purchase of the company, and to its own conclusion as to the weight to be given to the purchase price for this property in 1895.

Not Passing of Money.

"The contract of purchase of the Washington and Georgetown Railroad Company by the Rock Creek Railway Company, the testimony in the case clearly indicates that the so-called purchase was not, in fact, an actual purchase of the stock of the Washington and Georgetown Railroad Company at its par value in an amount equal to the then market value of the stocks and bonds of the Washington and Georgetown Railroad Company. The stock of this company at that time consisted of \$25 each of the par value of \$25 each. The outstanding bonds amounted to \$4,000,000 and their market value was \$3,000,000, and it is asserted, and is doubtless the fact, that this large sum of money was value given to the bonds because they were interchangeable for the stock of the company at par whenever authority to increase the capital stock should be obtained from Congress. This right of interchange was a part of the contract evidenced by the bonds, and was in these words: 'Six per cent registered coupon bonds, secured by deed of trust and interchangeable for stock at par whenever the right to increase the capital stock in an amount equal to the amount of bonds issued shall be obtained.'

Carried Valuable Privilege.

"It will thus be seen that these bonds carried with them a very valuable privilege provided Congress should give the bonds the right to exchange its bond for stock at par. This provision gave the bonds a speculative value, and it was a purely speculative value, because their ultimate value over and above that of any other 6 per cent registered coupon bonds was contingent upon an event which might never happen and which, as a matter of fact, never did happen. 'Another provision of these bonds was that they were redeemable at the expiration of ten years at the pleasure of the company, and at the time of the sale three million of the four million had only four years to run when this option of redemption would become operative, and the remaining million had a little less than eight years to run for one-half their face and a little less than ten years for the balance. These bonds were secured upon the corpus of the property of the company and constituted a lien thereon which could not have been disturbed by any transfer of the property. They were not and could not be a mortgage on the property. The holders thereof did not have to be consulted if the stockholders desired to pay with the property under legislative sanction, and at the end of forty years at all events, and within ten years from the date of their issue, at the option of the company, this bonded indebtedness could have been retired by mere satisfaction of the face value of the bonds.

Was Compelled to Buy.

"The contention is made before the commission that the Rock Creek Railway Company was compelled to buy this debt of the Capital Traction Company at double its face value in order to secure the stock of the company at its then market value and that, therefore, the company was forced to pay for the bonded indebtedness of the Washington and Georgetown Railroad Company at double the amount of the existing debt. In other words, the company had to repay not the original loan but double that amount to extinguish it, when by waiting three years it could have been extinguished at par as to three-fourths of it, at least.

"So far as the purchase of the Washington and Georgetown Railroad Company by the Rock Creek Railway Company is concerned, the

commission has no desire to question the legality of the transaction as between the parties to it, but it must be remembered that the public was not a party to this transaction and it has certain rights in the premises which must be considered. The question is presented as to whether or not the public shall be compelled to pay in the future the value of an intangible value, which certainly does not represent investment, and which is fixable by the public without regard to its effect upon future rates.

Value Fair and Reasonable.

"The commission has no hesitation in saying that it is its duty, regarding what the parties to the transaction may have thought, to ascertain whether or not the value attributed to an intangible asset of this character was fair and reasonable in the light of the facts surrounding the transaction at the time and of the subsequent experience of the company. The commission's duty is a public one, and the public is not to be charged with the capitalization of the enthusiastic expectations of the holders of public utility securities, no matter how honestly entertained, if the facts do not justify the same. It would certainly not be said that the commission is bound hand and foot by any conclusion interested parties may have reached in a private matter of this sort where the public was not represented. If this were so, and the parties to this transaction had capitalized these intangible assets at \$10,000,000 or \$20,000,000, instead of \$5,000,000, no relief could be afforded the present or future generations as to the burden so carried by them and as to which it is apparent they had neither the legal standing nor the opportunity to object at the time it was imposed.

Allowance of Claim.

"It, therefore, remains for the commission to discover in the evidence before it and from the records of the company, whether a basis exists for the allowance of this claim for intangible values in whole or in part, and the experience of the company prior to its purchase by the Rock Creek Railway Company in 1895 must be examined to see the potential earning capacity of the company up to this time in order to ascertain the basis upon which the purchase price of \$1,750,000 was made.

"While the total capital stock remained unchanged during the entire period from 1893 to 1895 the capital investment increased from the sale of bonds and the accumulation of surplus and the earnings likewise increased to a considerable extent. In order to determine the exchange or market value of the company on the basis of its net earnings these earnings are shown during the periods as most clearly indicate its earning capacity. Therefore, the average net earnings are taken for the following periods, which, according to the public, carefully to consider the financial history of the Washington and Georgetown Railroad Company, the relation of its earnings to its originally and subsequently invested capital and the other circumstances surrounding the purchase of the company, and to its own conclusion as to the weight to be given to the purchase price for this property in 1895.

Period ending—	Total net earnings—	Average—
December 31, 1872.....	192.5	\$91.25
December 31, 1873.....	192.5	\$91.25
December 31, 1874.....	192.5	\$91.25
December 31, 1875.....	192.5	\$91.25
December 31, 1876.....	192.5	\$91.25
December 31, 1877.....	192.5	\$91.25
December 31, 1878.....	192.5	\$91.25
December 31, 1879.....	192.5	\$91.25
December 31, 1880.....	192.5	\$91.25
December 31, 1881.....	192.5	\$91.25
December 31, 1882.....	192.5	\$91.25
December 31, 1883.....	192.5	\$91.25
December 31, 1884.....	192.5	\$91.25
December 31, 1885.....	192.5	\$91.25
December 31, 1886.....	192.5	\$91.25
December 31, 1887.....	192.5	\$91.25
December 31, 1888.....	192.5	\$91.25
December 31, 1889.....	192.5	\$91.25
December 31, 1890.....	192.5	\$91.25
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December 31, 1906.....	192.5	\$91.25
December 31, 1907.....	192.5	\$91.25
December 31, 1908.....	192.5	\$91.25
December 31, 1909.....	192.5	\$91.25
December 31, 1910.....	192.5	\$91.25
December 31, 1911.....	192.5	\$91.25
December 31, 1912.....	192.5	\$91.25
December 31, 1913.....	192.5	\$91.25
December 31, 1914.....	192.5	\$91.25
December 31, 1915.....	192.5	\$91.25
December 31, 1916.....	192.5	\$91.25
December 31, 1917.....	192.5	\$91.25
December 31, 1918.....	192.5	\$91.25
December 31, 1919.....	192.5	\$91.25

Capitalization at 6 Per Cent.

"From this table it appears that had the average net earnings of the company been capitalized at 6 per cent the following would have resulted: From June 30, 1893, to December 30, 1895, the company had earned, in round figures, 6 per cent on a capitalization of \$1,025,000; from 1895 to 1896, 6 per cent on \$1,025,000; from 1896 to 1897, 6 per cent on \$1,025,000; from 1897 to 1898, 6 per cent on \$1,025,000; from 1898 to 1899, 6 per cent on \$1,025,000; from 1899 to 1900, 6 per cent on \$1,025,000; from 1900 to 1901, 6 per cent on \$1,025,000; from 1901 to 1902, 6 per cent on \$1,025,000; from 1902 to 1903, 6 per cent on \$1,025,000; from 1903 to 1904, 6 per cent on \$1,025,000; from 1904 to 1905, 6 per cent on \$1,025,000; from 1905 to 1906, 6 per cent on \$1,025,000; from 1906 to 1907, 6 per cent on \$1,025,000; from 1907 to 1908, 6 per cent on \$1,025,000; from 1908 to 1909, 6 per cent on \$1,025,000; from 1909 to 1910, 6 per cent on \$1,025,000; from 1910 to 1911, 6 per cent on \$1,025,000; from 1911 to 1912, 6 per cent on \$1,025,000; from 1912 to 1913, 6 per cent on \$1,025,000; from 1913 to 1914, 6 per cent on \$1,025,000; from 1914 to 1915, 6 per cent on \$1,025,000; from 1915 to 1916, 6 per cent on \$1,025,000; from 1916 to 1917, 6 per cent on \$1,025,000; from 1917 to 1918, 6 per cent on \$1,025,000; from 1918 to 1919, 6 per cent on \$1,025,000; from 1919 to 1920, 6 per cent on \$1,025,000; from 1920 to 1921, 6 per cent on \$1,025,000; from 1921 to 1922, 6 per cent on \$1,025,000; from 1922 to 1923, 6 per cent on \$1,025,000; from 1923 to 1924, 6 per cent on \$1,025,000; from 1924 to 1925, 6 per cent on \$1,025,000; from 1925 to 1926, 6 per cent on \$1,025,000; from 1926 to 1927, 6 per cent on \$1,025,000; from 1927 to 1928, 6 per cent on \$1,025,000; from 1928 to 1929, 6 per cent on \$1,025,000; from 1929 to 1930, 6 per cent on \$1,025,000; from 1930 to 1931, 6 per cent on \$1,025,000; from 1931 to 1932, 6 per cent on \$1,025,000; from 1932 to 1933, 6 per cent on \$1,025,000; from 1933 to 1934, 6 per cent on \$1,025,000; from 1934 to 1935, 6 per cent on \$1,025,000; from 1935 to 1936, 6 per cent on \$1,025,000; from 1936 to 1937, 6 per cent on \$1,025,000; from 1937 to 1938, 6 per cent on \$1,025,000; from 1938 to 1939, 6 per cent on \$1,025,000; from 1939 to 1940, 6 per cent on \$1,025,000; from 1940 to 1941, 6 per cent on \$1,025,000; from 1941 to 1942, 6 per cent on \$1,025,000; from 1942 to 1943, 6 per cent on \$1,025,000; from 1943 to 1944, 6 per cent on \$1,025,000; from 1944 to 1945, 6 per cent on \$1,025,000; from 1945 to 1946, 6 per cent on \$1,025,000; from 1946 to 1947, 6 per cent on \$1,025,000; from 1947 to 1948, 6 per cent on \$1,025,000; from 1948 to 1949, 6 per cent on \$1,025,000; from 1949 to 1950, 6 per cent on \$1,025,000; from 1950 to 1951, 6 per cent on \$1,025,000; from 1951 to 1952, 6 per cent on \$1,025,000; from 1952 to 1953, 6 per cent on \$1,025,000; from 1953 to 1954, 6 per cent on \$1,025,000; from 1954 to 1955, 6 per cent on \$1,025,000; from 1955 to 1956, 6 per cent on \$1,025,000; from 1956 to 1957, 6 per cent on \$1,025,000; from 1957 to 1958, 6 per cent on \$1,025,000; from 1958 to 1959, 6 per cent on \$1,025,000; from 1959 to 1960, 6 per cent on \$1,025,000; from 1960 to 1961, 6 per cent on \$1,025,000; from 1961 to 1962, 6 per cent on \$1,025,000; from 1962 to 1963, 6 per cent on \$1,025,000; from 1963 to 1964, 6 per cent on \$1,025,000; from 1964 to 1965, 6 per cent on \$1,025,000; from 1965 to 1966, 6 per cent on \$1,025,000; from 1966 to 1967, 6 per cent on \$1,025,000; from 1967 to 1968, 6 per cent on \$1,025,000; from 1968 to 1969, 6 per cent on \$1,025,000; from 1969 to 1970, 6 per cent on \$1,025,000; from 1970 to 1971, 6 per cent on \$1,025,000; from 1971 to 1972, 6 per cent on \$1,025,000; from 1972 to 1973, 6 per cent on \$1,025,000; from 1973 to 1974, 6 per cent on \$1,025,000; from 1974 to 1975, 6 per cent on \$1,025,000; from 1975 to 1976, 6 per cent on \$1,025,000; from 1976 to 1977, 6 per cent on \$1,025,000; from 1977 to 1978, 6 per cent on \$1,025,000; from 1978 to 1979, 6 per cent on \$1,025,000; from 1979 to 1980, 6 per cent on \$1,025,000; from 1980 to 1981, 6 per cent on \$1,025,000; from 1981 to 1982, 6 per cent on \$1,025,000; from 1982 to 1983, 6 per cent on \$1,025,000; from 1983 to 1984, 6 per cent on \$1,025,000; from 1984 to 1985, 6 per cent on \$1,025,000; from 1985 to 1986, 6 per cent on \$1,025,000; from 1986 to 1987, 6 per cent on \$1,025,000; from 1987 to 1988, 6 per cent on \$1,025,000; from 1988 to 1989, 6 per cent on \$1,025,000; from 1989 to 1990, 6 per cent on \$1,025,000; from 1990 to 1991, 6 per cent on \$1,025,000; from 1991 to 1992, 6 per cent on \$1,025,000; from 1992 to 1993, 6 per cent on \$1,025,000; from 1993 to 1994, 6 per cent on \$1,025,000; from 1994 to 1995, 6 per cent on \$1,025,000; from 1995 to 1996, 6 per cent on \$1,025,000; from 1996 to 1997, 6 per cent on \$1,025,000; from 1997 to 1998, 6 per cent on \$1,025,000; from 1998 to 1999, 6 per cent on \$1,025,000; from 1999 to 2000, 6 per cent on \$1,025,000; from 2000 to 2001, 6 per cent on \$1,025,000; from 2001 to 2002, 6 per cent on \$1,025,000; from 2002 to 2003, 6 per cent on \$1,025,000; from 2003 to 2004, 6 per cent on \$1,025,000; from 2004 to 2005, 6 per cent on \$1,025,000; from 2005 to 2006, 6 per cent on \$1,025,000; from 2006 to 2007, 6 per cent on \$1,025,000; from 2007 to 2008, 6 per cent on \$1,025,000; from 2008 to 2009, 6 per cent on \$1,025,000; from 2009 to 2010, 6 per cent on \$1,025,000; from 2010 to 2011, 6 per cent on \$1,025,000; from 2011 to 2012, 6 per cent on \$1,025,000; from 2012 to 2013, 6 per cent on \$1,025,000; from 2013 to 2014, 6 per cent on \$1,025,000; from 2014 to 2015, 6 per cent on \$1,025,000; from 2015 to 2016, 6 per cent on \$1,025,000; from 2016 to 2017, 6 per cent on \$1,025,000; from 2017 to 2018, 6 per cent on \$1,025,000; from 2018 to 2019, 6 per cent on \$1,025,000; from 2019 to 2020, 6 per cent on \$1,025,000; from 2020 to 2021, 6 per cent on \$1,025,000; from 2021 to 2022, 6 per cent on \$1,025,000; from 2022 to 2023, 6 per cent on \$1,025,000; from 2023 to 2024, 6 per cent on \$1,025,000; from 2024 to 2025, 6 per cent on \$1,025,000; from 2025 to 2026, 6 per cent on \$1,025,000; from 2026 to 2027, 6 per cent on \$1,025,000; from 2027 to 2028, 6 per cent on \$1,025,000; from 2028 to 2029, 6 per cent on \$1,025,000; from 2029 to 2030, 6 per cent on \$1,025,000; from 2030 to 2031, 6 per cent on \$1,025,000; from 2031 to 2032, 6 per cent on \$1,025,000; from 2032 to 2033, 6 per cent on \$1,025,000; from 2033 to 2034, 6 per cent on \$1,025,000; from 2034 to 2035, 6 per cent on \$1,025,000; from 2035 to 2036, 6 per cent on \$1,025,000; from 2036 to 2037, 6 per cent on \$1,025,000; from 2037 to 2038, 6 per cent on \$1,025,000; from 2038 to 2039, 6 per cent on \$1,025,000; from 2039 to 2040, 6 per cent on \$1,025,000; from 2040 to 2041, 6 per cent on \$1,025,000; from 2041 to 2042, 6 per cent on \$1,025,000; from 2042 to 2043, 6 per cent on \$1,025,000; from 2043 to 2044, 6 per cent on \$1,025,000; from 2044 to 2045, 6 per cent on \$1,025,000; from 2045 to 2046, 6 per cent on \$1,025,000; from 2046 to 2047, 6 per cent on \$1,025,000; from 2047 to 2048, 6 per cent on \$1,025,000; from 2048 to 2049, 6 per cent on \$1,025,000; from 2049 to 2050, 6 per cent on \$1,025,000; from 2050 to 2051, 6 per cent on \$1,025,000; from 2051 to 2052, 6 per cent on \$1,025,000; from 2052 to 2053, 6 per cent on \$1,025,000; from 2053 to 2054, 6 per cent on \$1,025,000; from 2054 to 2055, 6 per cent on \$1,025,000; from 2055 to 2056, 6 per cent on \$1,025,000; from 2056 to 2057, 6 per cent on \$1,025,000; from 2057 to 2058, 6 per cent on \$1,025,000; from 2058 to 2059, 6 per cent on \$1,025,000; from 2059 to 2060, 6 per cent on \$1,025,000; from 2060 to 2061, 6 per cent on \$1,025,000; from 2061 to 2062, 6 per cent on \$1,025,000; from 2062 to 2063, 6 per cent on \$1,025,000; from 2063 to 2064, 6 per cent on \$1,025,000; from 2064 to 2065, 6 per cent on \$1,025,000; from 2065 to 2066, 6 per cent on \$1,025,000; from 2066 to 2067, 6 per cent on \$1,025,000; from 2067 to 2068, 6 per cent on \$1,025,000; from 2068 to 2069, 6 per cent on \$1,025,000; from 2069 to 2070, 6 per cent on \$1,025,000; from 2070 to 2071, 6 per cent on \$1,025,000; from 2071 to 2072, 6 per cent on \$1,